

1922.
NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1920.

REPORT AND RECOMMENDATION ON PETITION No. 44/1920, RELATIVE TO SUCCESSION TO MIRI
ARAPATA (DECEASED) IN NGATIRAHIRI 6 AND 14, 1892 ACT LEASES.

*Presented to Parliament in pursuance of Section 32 of the Native Land Amendment and Native Land
Claims Adjustment Act, 1920.*

Native Department, Wellington, 13th October, 1922.

Re Petition 44/1920 re Miri Arapata (deceased).

PURSUANT to section 32 of the Native Land Amendment and Native Land Claims Adjustment Act, 1920, the report of the Court herein is enclosed.

The question at issue is whether or not the right persons have succeeded. The Native Appellate Court is the best tribunal to settle this matter, and I therefore recommend legislation giving that Court power to do so.

The Hon. Native Minister, Wellington.

R. N. JONES, Chief Judge.

REPORT TO THE CHIEF JUDGE.

Application 140.—Ngatirahiri 6 and 14.—1892 Act Leases.

APPLICATION by Chief Judge under section 32 of Native Land Amendment and Native Land Claims Adjustment Act, 1920, to inquire into and report upon the claims of Petitioner (Petition 44 of 1920) Rawiri Kuao *re* succession to Miri Arapata (deceased).

Mr. J. H. Damon for Rawiri family, the petitioner (Rawiri Kuao) being now dead.

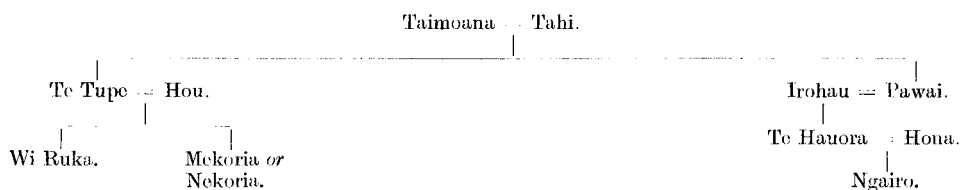
Mr. J. B. Jack for Tawhanga Eruera and his half-sister Roka Tumaiwaho, the present successors.

The hearing of this matter took place at New Plymouth on the 24th May, 1922 (see M.B. 33, folios 33–41). Beyond references to a number of whakapapas and to a few old minutes, the Court has had little assistance from the parties in this matter, but can somewhat understand this after examining the very confused and exceedingly conflicting evidence available.

The succession order which petitioner wishes to have set aside was one made by Judge Browne at New Plymouth on the 13th October, 1919 (see M.B. 28, folio 340), in favour of Tawhanga Eruera and his half-sister Roka Tumaiwaho equally. As Roka Tumaiwaho was only the half-sister of Tawhanga by the same mother but not by the same father (Eruera Patara), she had no claim to succeed at all, but was presumably put in by Tawhanga as part of the arrangement referred to by Mr. Oldham (M.B. 28, folio 339).

For the petitioner, Mr. Damon claimed that Miri Arapata obtained her shares in this block through Wi Ruka te Tupe, Ngairo, and Nikoria (or Nekoria), and that therefore the rights came solely through Te Tupe, the father of Wi Ruka, and not through Te Hou, the mother of Wi Ruka. In support he quotes M.B. 9, folio 317, where the succession order for the interest of Ngairo in Ngatirahiri 6 and 14 is made in favour of Wi Ruka. This order is dated 1st February, 1905, and was made

in favour of Wi Ruka at the request of Tawhanga Eruera and Amiria Kihi. Tawhanga Eruera called upon one Hanikamu to give the whakapapa, which was as follows :—



There were no objections by Tawhanga to this whakapapa. Amiria Kihi approved it as correct.

Reference to M.B. 6, folios 86 and 87 (date 13th May, 1892), indicates also that Wi Ruka te Tupe succeeded to 70 acres of Nikoria. The minute says, "Eruera Patara will in the new certificate of title (for Ngatirahiri No. 6) get 87½ eka, Tawhanga Patara 30 eka, Kiri Ngehe 74½ eka, and Nikoria's successor 70 eka." Attached to page 86 of this M.B. 6 is a memo from the Judge to the Registrar of the Court stating that Eruera and the others shall hold the block in the same proportions as the above, but in lieu of "Nikoria's successor" the Judge has inserted "Wiruka te Tupe, $\frac{70}{82}$." It appears from this that the Court, on or about that time (1892), appointed, or purported to appoint, Wiruka te Tupe as successor to Nikoria in this block. The Court has not been able to trace the order itself, if made.

A search of the Court file shows that Nekoria and Ngairo were original owners, but Te Tupe was not. The succession order *in re* Ngairo's interest was made in favour of Wi Ruka on the 1st February, 1905, and the Court has certainly treated Wi Ruka te Tupe as the sole successor to Nikoria (Nekoria). The Court file shows no other shares in this block belonging to either Te Tupe or Wi Ruka te Tupe. It seems safe to assume, therefore, that Wi Ruka te Tupe obtained the whole of his interests in this block from Ngairo and Nekoria. M.B. 3, folios 105-6, shows that Wi Ruka, after being left out of the lists for Matarikoriko, which is Ngatirahiri land, was put in again for a substantial share in Matarikoriko.

On the 22nd August, 1910 (M.B. 17, folio 120), Te Miri Arapata was appointed sole successor to Wi Ruka te Tupe, being his legally adopted child. Te Miri Arapata had no other interest in this block, so it seems safe to assume that the whole 140 shares held by her in Ngatirahiri 6 and 14, 1892 Act leases, came from Ngairo and Nekoria through Wi Ruka te Tupe.

If the whakapapa given in M.B. 9, folio 317, is correct and complete, it will strongly support the claim of the Rawiri family that the whole right of Miri Arapata came through Te Tupe and not through Te Hou. According to this whakapapa they would certainly be entitled to the whole of the shares derived from Ngairo. Also, if Wi Ruka te Tupe were in fact the nearest of kin to Ngairo, then he would also be the nearest of kin to Nekoria through their father Te Tupe. Ngairo and Nekoria may have got the grant as being the grandnephew and child of Te Tupe, who was left out. In such a case it would not be necessary for them to have been included on account of their relationship to Te Hou.

This whakapapa (M.B. 9, folio 317) does not agree in some respects with whakapapas elsewhere, and may possibly be no more complete or more accurate than they are.

Some important evidence is given in M.B. 15, folios 343-346 (date, 17th February, 1909), *re* adoption of Miri Arapata by Wi Ruka te Tupe. At that hearing the following persons took part in the proceedings: Wi Ruka te Tupe, Hanikamu, Tawhanga Eruera, Miri Arapata. That is, all the most important persons for the present hearing were there. Wi Ruka te Tupe gave the whakapapa connecting up his name with that of Miri Arapata, and showing Taimoana as the brother of Te Tupe. Wi Ruka specially stated that he wished Miri Arapata to succeed him, and desired that on Miri's death the interests should revert back to the next-of-kin of Wi Ruka.

In view of this statement by Wi Ruka, Tawhanga Eruera extended the whakapapa given by Wi Ruka so as to include all the next-of-kin on the side of the father (Te Tupe) of Wi Ruka (see M.B. 15, folios 345, 346). The next-of-kin on the father's side were Rawiri te Peke and Kura Tautohe, equally. Tawhanga then said that the relatives of Wi Ruka on the side of his mother, Te Hou, were given in M.B. 15, folios 95, 96 (*i.e.*, allowing for deceased persons, Tawhanga Eruera would be the sole next-of-kin on the side of the mother, Te Hou—known also as Hou Kiriupu).

It seems clear, therefore, that each side considered at the time that Wi Ruka te Tupe held his lands both through his father and his mother, and that each side would participate on Miri's death. Unfortunately, this M.B. 15/345 does not say which of deceased's interests came through the mother (Te Hou) and which through the father (Te Tupe). The near of kin to Te Hou are certainly big owners in Ngatirahiri, but there is no evidence whatever to indicate that Ngairo and Nekoria were put into the Ngatirahiri grant on account of any relationship to Te Hou.

In several important respects the whakapapas given by Tawhanga Eruera differ from other whakapapas on the Court records. For instance, in Judge Ward's Minute-book No. 32, folio 49, dated 27th October, 1896, there is a whakapapa by Eruera Patara, the father of Tawhanga Eruera. It quotes the children of Hinetangi and Kiri Hupu as being Aperahama, Hoeta, Kiri Ngehe, and Wharawhara, whereas Tawhanga Eruera in his whakapapa of the 12th December, 1908, M.B. 15/95, quotes the children of the same two parents as being Aperahama, Hou Kiriupu, Hoeta Hurakia, and Te Kara Pouaka. How is it that Tawhanga mentions two names (Hou Kiriupu and Te Kara Pouaka) not mentioned by his own father?

Again, Tawhanga Eruera's whakapapa of the 12th December, 1908 (M.B. 15/95), shows Te Kirihi as the aunt of Hou Kiriupu, whereas his whakapapa of the 2nd June, 1919 (M.B. 28/126), shows Te Kirihi as the sister of Hou.

Again, Tawhanga Eruera's whakapapas given on the 17th February, 1909 (M.B. 15/345), and on the 2nd June, 1919 (M.B. 28/127), do not by any means agree with the whakapapa agreed to by him on succession to Ngairo (deceased): See M.B. 9, folio 137; date, 1st February, 1905. In the latter, Taimoana is shown as the father of Te Tupe and Te Irohau, whereas in M.B. 15/345 and in M.B. 28/127 he is shown as the brother of Te Tupe and Waikauri. If Tawhanga's whakapapas of the 17th February, 1909, and 2nd June, 1919, are correct, then the issue of Taimoana (the Rawiri family) and the issue of Waikauri (*i.e.*, Kura Tautohe) were wrongly left out of the succession to Ngairo (M.B. 9, folio 317). Moreover, Tawhanga's whakapapas do not agree with the whakapapa given by Tuiti Kahutopa on the 10th November, 1887 (M.B. 4, folio 157), in case of succession to Pinarepe in Ngatirahiri 6 and 14. If Tuiti's whakapapa is correct, then Tawhanga Eruera is by no means the sole next-of-kin on the side through which he claims. The fact that Tuiti Kahutopa, the husband of Pinarepe Tuiti, stated (M.B. 4/157) that Nikoria was the aunt and Wi Ruka the uncle of Pinarepe shows that Wi Ruka was either the brother or first cousin of Nikoria, and a close relative to Tarete, the father of Pinarepe, and of numerous other prominent persons mentioned in the whakapapas.

Again, on Eruera Patara's whakapapa shown in Judge Ward's M.B. 32, folio 49, Tawhanga was not entitled to claim that he was the sole next-of-kin on the side of the mother of Wi Ruka te Tupe. The omission of the name Te Hou (as a sister of Aperahama) by both Eruera Patara (M.B. 32/49) and Tuiti Kahutopa (M.B. 157), and the other discrepancies above referred to, cause the Court to have grave doubts as to the reliability of Tawhanga Eruera's whakapapas. The Court doubts if the other whakapapas can be relied on either.

Conclusion.—The Court reports as follows:—

1. Miri Arapata died intestate, December, 1918, leaving brothers and sisters but no issue of her own.

2. She obtained the whole of her interest (140 shares) in Ngatirahiri 6 and 14 by succession to Wi Ruka te Tupe (22nd August, 1910) as the legally adopted child of Wi Ruka.

3. In the absence of issue of her body, these shares should go back to Wi Ruka—or, rather, as Wi Ruka left no issue, to the source from which Wi Ruka got the shares.

4. The Court is satisfied that Wi Ruka te Tupe obtained these shares solely through Ngairo and Nekoria, who were both original owners under the Crown grant. Despite the evidence in M.B. 9, folio 317, referred to above, the Court is not yet satisfied that Wi Ruka obtained these interests solely through his father Te Tupe, or that Te Tupe was the sole nearest of kin to Ngairo and Nekoria. The Court does not consider that the right to succeed to Ngairo and Nekoria was sufficiently investigated in this block.

5. The various parties consented to the arrangement before the Court on the 13th October, 1919, whereby Tawhanga and his half-sister received Miri Arapata's interest in Ngatirahiri 6 and 14 (see M.B. 28/339), but it is possible that some of the parties were not sufficiently conversant with the old whakapapas given in the Court minutes.

6. In the event of the parties not being considered to be absolutely bound by their agreement, the Court recommends that the succession to Miri Arapata in Ngatirahiri 6 and 14, and also in the other two blocks affected by the agreement—*i.e.*, Ngatirahiri 5A 2 and Tikorangi grant 4020—be referred back to the Native Land Court for inquiry as to who are the next-of-kin of Ngairo and Nekoria, and for the making of fresh orders (as to Ngatirahiri 6 and 14, at any rate) in favour of those persons who may be found by the Court to be the sole next-of-kin of Ngairo and Nekoria.

7. Some inquiry seems essential as to whether in any event, even if the petitioner does not succeed, Tawhanga Eruera is entitled to be regarded as the sole next-of-kin under the claim put forward by him.

References to minutes: M.B. 4/156–7; M.B. 6/84; M.B. 9/317; M.B. 15/95 and 343–5; M.B. 17/120; M.B. 18/155; M.B. 28/125, 339, 340; Judge Ward's M.B. 32/49.

3rd October, 1922.

F. O. V. ACHESON, Judge.

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